



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Insurance Commissioner

- ☒ Permanent Rule
☐ Emergency Rule
☐ Expedited Rule Making

(1) Date of adoption: January 13, 2003

(2) Purpose: Amend Chapter 284-22 WAC. This rule-making was initiated by a petition from the Governing Committee of the United States Longshore and Harbor Workers Assigned Risk Plan. The rules amend Chapter 284-22 WAC to allow for distributions to participants. The information gathering process and minimum threshold for assessment are made more flexible. A process is created to assess insurers who do not report information in a timely manner.

Insurance Commissioner Matter No. R 2001-10

(3) Citation of existing rules affected by this order:

Repealed:
Amended: WAC 284-22-020, 284-22-050, 284-22-060, 284-22-080
Suspended:

(4) Statutory authority for adoption: RCWs 48.02.060 & 48.22.070

Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 02-14-154 on July 3, 2002.

Describe any changes other than editing from proposed to adopted version: Language in the last sentence of WAC 284-22-080(3) is changed to be consistent with language in WAC 284-22-060

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

☐ Yes ☒ No If Yes, explain:

(6) Effective date of rule:

Permanent Rules

- ☒ 31 days after filing
☐ Other (specify) _____*

Emergency Rules

- ☐ Immediately
☐ Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Mike Kreidler

Signature

Title

Insurance Commissioner

Date

January 13, 2003

CODE REVISER USE ONLY

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	<u>4</u>	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>4</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>4</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending Order R 93-17, filed 9/24/93, effective 10/25/93)

WAC 284-22-020 Purpose. The purposes of the assigned risk plan are:

(1) To promote a strong and healthy maritime industry, within Washington state, by ensuring the continued availability of workers' compensation coverage required by the United States Longshore and Harbor Workers' Act and maritime employers' liability coverage incidental to such workers' compensation coverage for employers who are unable to purchase it through the normal insurance market.

(2) To provide a mechanism through which the ~~((underwriting results))~~ net income or loss of the assigned risk plan ~~((are))~~ is shared by authorized insurers writing primary or excess United States Longshore and Harbor Workers' insurance within Washington state and the Washington state industrial insurance fund.

AMENDATORY SECTION (Amending Order R 93-17, filed 9/24/93, effective 10/25/93)

WAC 284-22-050 Definitions. (1) "Administrator" means any organization designated by the assigned risk plan and approved by the commissioner to provide administrative support for the plan. Such support shall be defined by the governing committee in its operating plan. It may include, but is not limited to, acceptance, processing, and distribution of incoming applications to the servicing carrier(s), collection of and accounting for premium income, determination of assigned risk plan reserves, investment of assigned risk plan assets, collection of statistical data, actuarial assistance for rate making, development of policy contracts, and auditing the activities of servicing carrier(s) to ensure that the assigned risk plan's rules are being applied properly.

(2) "Applicant" means an employer, seeking coverage from the assigned risk plan, who has, in good faith, sought United States longshore and harbor workers' coverage from at least two of the authorized insurers writing such coverage in Washington and has been declined such coverage by all insurers from which it has sought coverage. "Applicant" does not include employers seeking coverage through the plan solely because of the lack of availability of maritime employers' liability coverage.

(3) "Authorized insurer" means any insurance company licensed to write workers' compensation insurance on a direct basis in this state.

(4) "Commissioner" means the commissioner of insurance of the state of Washington.

(5) "Governing committee" means the committee responsible for administering the assigned risk plan. It shall consist of thirteen members, who shall be appointed by the commissioner. The director of the department of labor and industries shall be one member. The remaining members shall be selected to insure equal representation of each of the following interest groups; authorized insurers writing primary or excess

workers' compensation insurance, insurance producers, organized labor, and maritime employers.

(6) "Maritime employers' liability" means that liability imposed by 46 U.S.C. 688 (the Jones Act) and general maritime law for bodily injury including death of a master or member of the crew of any vessel.

(7) "Servicing carrier" means any authorized insurer designated by the assigned risk plan and approved by the commissioner and the United States Department of Labor to issue workers' compensation policies. It shall issue policies on behalf of the assigned risk plan, provide safety engineering, handle claims incurred by those covered by the assigned risk plan, provide premium audits, perform underwriting functions, and perform other duties as defined by the governing committee in its operating procedures.

(8) "State industrial insurance fund" means that entity defined in RCW 51.08.175 which provides primary workers' compensation insurance on a direct basis in this state.

~~(9) ("Underwriting results" means the assigned risk plan's revenues less incurred claims plus net operating expenses, net of reinsurance, during its period of operation.~~

~~(10))~~ "United States longshore and harbor workers' compensation coverage" means that workers' compensation coverage required of employers by the United States Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Secs. 901 through 950. It is hereinafter referred to as USL&H coverage.

~~((+11))~~ (10) "Written premium" means gross direct premiums (excluding premiums on risks written ceded to the assigned risk plan), within the state of Washington, charged during the first preceding calendar year with respect to United States Longshore and Harbor Workers' insurance, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

AMENDATORY SECTION (Amending Order R 93-17, filed 9/24/93, effective 10/25/93)

WAC 284-22-060 Participation. (1) Participation in the assigned risk plan is mandatory for all authorized insurers writing primary or excess United States Longshore and Harbor Workers' Act compensation insurance in Washington state, and for the state industrial insurance fund. ~~((Underwriting results shall be shared by the participants in accordance with the following ratio: The state industrial insurance fund, fifty percent; authorized insurers writing such United States Longshore and Harbor Workers' coverage, fifty percent.~~

~~(2) The amount of participation of each authorized insurer shall be based on the proportional share of its United States Longshore and Harbor Workers' compensation premium written within Washington to all such premium written within the appropriate category during the first preceding calendar year. However, the governing committee, subject to the commissioner's approval, and subject to the requirement that the amount assumed by all insurers within each category must be as stated in~~

~~subsection (1) of this section, has the authority to allocate assessments in such a fashion that no authorized insurer shall be required to participate in the plan if the amount of an assessment shall be less than fifty dollars.~~

~~(3) Each authorized insurer writing United States Longshore and Harbor Workers' insurance shall by September 1 of each calendar year make a report to the governing committee identifying the amount of its written premium in the preceding year applying to United States Longshore and Harbor Workers' coverage and the amount applying to excess workers' compensation coverage.))~~

(2) Any assessments and distributions declared by the governing committee of the plan shall be allocated in accordance with RCW 48.22.070, fifty percent to the industrial insurance fund and fifty percent to the insurer participants as a group. Assessments and distributions shall be allocated amongst the eligible insurer participants according to their relative subject premium volumes as determined by the governing committee, subject to a reasonable de minimus premium threshold established by the governing committee for each assessment or distribution.

(3) For purposes of assessments and distributions, "subject premium" shall be for each authorized and eligible insurer its primary and excess written premiums for risks in the state of Washington covered under United States Longshore and Harbor Workers' Act compensation insurance, and maritime employer's liability insurance incidental to that workers' compensation insurance, for the relevant time periods as determined by the governing committee. If any insurer fails to provide its subject premium data in an accurate and timely manner upon request by the plan, the governing committee may, in its sole discretion, substitute that insurer's direct written premiums for workers' compensation reported or reportable in its statutory annual statement as statutory page fourteen data for the state of Washington, or the governing committee may, in its sole discretion, substitute a zero amount for that insurer.

(4) Timing and amount of assessments and distributions shall be at the discretion of the governing committee, subject to the commissioner's approval. Assessments shall be based upon a demonstrable need to obtain additional funds to safeguard the operations of the plan in a financially sound and responsible manner, including, but not limited to, fully funding all of the plan's current and long term financial obligations. The governing committee may request approval for distributions to plan participants from time to time, of surpluses incurred which exceed amounts deemed necessary by the governing committee to safeguard the operations of the plan in a financially sound and responsible manner, including, but not limited to, fully funding all of the plan's current and long term financial obligations. Notwithstanding any prior distributions which may have been approved or directed by the commissioner, if the plan has been terminated by the legislature, then the plan shall be required to distribute, in accordance with RCW 48.22.070, any surplus of funds after payment or provision for payment of all of the plan's liabilities.

AMENDATORY SECTION (Amending Order R 92-12, filed 9/16/92, effective 10/17/92)

WAC 284-22-080 Approval by commissioner. (1) The commissioner shall approve the assigned risk plan's operating procedures if they provide for the fair, reasonable, and equitable administration of the assigned risk plan for all concerned.

(2) The commissioner shall approve rate and form filings made by the servicing carrier(s) on behalf of the plan using the same standards that would apply to an insurance program designed and filed with the commissioner by an authorized insurer.

(3) The commissioner shall approve the assigned risk plan's requests for interim and regular assessments, and requests for distributions from time to time, upon receipt of evidence that such assessments are necessary ((to insure its)), or such distributions are prudent, and that such assessments or distributions ensure the plan's continued operation in a financially sound and ((competent)) responsible manner.